

EXHIBIT 172



experience does matter

**CASE: In re: Pharmaceutical Industry Average Wholesale Price
Litigation**

DATE: August 28, 2007

Enclosed is the Original of the transcript of the testimony of Catherine V. Babington along with the errata sheet in the above-titled case. Please have the witness read the deposition and sign the signature page before a Notary Public.

After the signature page has been notarized, please return the original transcript and errata sheets to the custodial attorney within 30 days of receipt for proper filing.

Thank you for your attention to this matter and please feel free to contact us with any questions or concerns.

Sincerely,

Henderson Legal Services

Encl.

Henderson Legal Services
Phone: 202-220-4158
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Babington, Catherine V. CONFIDENTIAL - ATTORNEYS' EYES ONLY

August 28, 2007

Chicago, IL

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IN THE UNITED STATES
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE)
PRICE LITIGATION) MDL No. 1456
) Civil Action No.
THIS DOCUMENT RELATES TO:) 01-CV-12257-PBS
)
ALL CASES)
) Judge Patti B. Saris

ORAL AND VIDEOTAPED DEPOSITION OF

CATHERINE V. BABINGTON

August 28, 2007

CONFIDENTIAL, ATTORNEYS' EYES ONLY

Henderson Legal Services
202-220-4158

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August 28, 2007

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<p>1 NO. D-1-GV-04-001286</p> <p>2</p> <p>3 THE STATE OF TEXAS) IN THE DISTRICT COURT</p> <p>4)</p> <p>5 ex rel.)</p> <p>6)</p> <p>7 VEN-A-CARE OF THE)</p> <p>8 FLORIDA KEYS, INC.,)</p> <p>9)</p> <p>10 Plaintiffs,)</p> <p>11)</p> <p>12 VS.) TRAVIS COUNTY, TEXAS</p> <p>13)</p> <p>14 ABBOTT LABORATORIES, INC.,)</p> <p>15 ABBOTT LABORATORIES, and)</p> <p>16 HOSPIRA, INC.,)</p> <p>17)</p> <p>18 Defendants.) 201ST JUDICIAL COURT</p> <p>19 *****</p> <p>20 ORAL AND VIDEOTAPED DEPOSITION OF</p> <p>21 CATHERINE V. BABINGTON, taken in the</p> <p>22 above-entitled cause pursuant to the Federal</p>	<p>1 A P P E A R A N C E S</p> <p>2 FOR THE PLAINTIFF OF THE STATE OF TEXAS:</p> <p>3 MS. MARGARET MOORE</p> <p>4 Assistant Attorney General</p> <p>5 Antitrust & Civil Medicaid Fraud Division</p> <p>6 P.O. Box 12548</p> <p>7 Austin, Texas 78711-2548</p> <p>8</p> <p>9 FOR THE PLAINTIFF UNITED STATES OF AMERICA:</p> <p>10 MR. GEJAA T. GOBENA</p> <p>11 United States Department of Justice</p> <p>12 Civil Division</p> <p>13 Commercial Litigation - Fraud Section</p> <p>14 601 D Street, NW</p> <p>15 PHB-9028/P.O. Box 261</p> <p>16 Washington, DC 20044</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
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<p>1 Rules of Civil Procedure of the United States</p> <p>2 District Courts, pertaining to the taking of</p> <p>3 depositions, taken before JANICE M. KOCEK, a</p> <p>4 Notary Public within and for the County of Cook,</p> <p>5 and the State of Illinois, and a Certified</p> <p>6 Shorthand Reporter, taken at 77 West Wacker</p> <p>7 Drive, Suite 3500, Chicago, Illinois, on the 28th</p> <p>8 day of August, 2007, at the hour of 9:10 a.m.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 A P P E A R A N C E S (CONTINUED)</p> <p>2 FOR THE PLAINTIFF THE STATE OF ARIZONA</p> <p>3 AND MDL PLAINTIFFS:</p> <p>4 MS. AMBER M. NESBITT</p> <p>5 Wexler Toriseva Wallace</p> <p>6 55 West Monroe Street</p> <p>7 Suite 3300</p> <p>8 Chicago, Illinois 60603</p> <p>9</p> <p>10 FOR THE PLAINTIFF THE STATE OF CALIFORNIA:</p> <p>11 MR. ELISEO SISNEROS</p> <p>12 Deputy Attorney General</p> <p>13 BMFEA</p> <p>14 Bureau of Medi-Cal Fraud & Elder Abuse</p> <p>15 State of California Department of Justice</p> <p>16 110 West A Street #1100</p> <p>17 San Diego, California 92101</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

2 (Pages 2 to 5)

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1 BY MR. GOBENA:
 2 Q. But as a general proposition, when,
 3 when you're talking about a position paper that
 4 the company is taking that's going to be in the
 5 public sphere on, on public policy, would you
 6 have been involved in any approval process on
 7 behalf of Public Affairs?
 8 MR. DALY: Object to the form.
 9 THE WITNESS: Could you ask me the
 10 question again?
 11 THE WITNESS: The court reporter can
 12 read back that.
 13 (Record read as requested.)
 14 MR. DALY: Same objection.
 15 THE WITNESS: It was likely that I
 16 would have been involved.
 17 BY MR. GOBENA:
 18 Q. Your sign-off would have been required
 19 on behalf of Public Affairs for that -- any
 20 approval such as the one described on this
 21 document to have taken place?
 22 MR. DALY: Objection. Sorry, objection

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1 to the form.
 2 THE WITNESS: I can't say that my
 3 sign-off would have been required. It's likely
 4 the vice president of Public Affairs would review
 5 a position of the company.
 6 BY MR. GOBENA:
 7 Q. Well, if you -- if you weren't the
 8 person to sign-off on it, who within your shop
 9 would have the -- would have had the authority to
 10 approve or disapprove a proposed position paper
 11 on Medicare reform?
 12 MR. DALY: Object to the form.
 13 THE WITNESS: I can't say with
 14 certainty.
 15 BY MR. GOBENA:
 16 Q. Do you know whether this position paper
 17 that is attached here to this exhibit was ever
 18 approved by Public Affairs?
 19 A. I don't know for certain.
 20 Q. I believe you testified earlier that
 21 you knew James Miller; is that correct?
 22 A. Correct.

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1 Q. And that you had worked with him,
 2 correct?
 3 A. Correct.
 4 Q. All right. Okay. Did you know that
 5 Mr. Miller gave a deposition in connection with
 6 this case that -- for which you're appearing
 7 today?
 8 A. No.
 9 Q. Okay. Well, Mr. Miller was asked about
 10 this report, this proposed paper, and he
 11 testified that Public Affairs never approved it.
 12 Do you have any recollection of Public
 13 Affairs in November of 1996 not approving or
 14 disapproving of a position paper that Abbott was
 15 going to take on Medicare reform?
 16 MR. DALY: Before you answer, I just
 17 want to object in the sense of -- I'm not saying
 18 you characterized it right or wrong. All I want
 19 to do is let the witness know who said it
 20 wasn't. She didn't know he was deposed.
 21 That you don't necessarily have to
 22 accept what Mr. Gobena says that Mr. Miller

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1 testified to.
 2 THE WITNESS: Uh-huh.
 3 MR. DALY: But I'm not saying he did it
 4 wrong. But that was just sort of a prefatory
 5 remark. So with that objection, you can go ahead
 6 and answer.
 7 THE WITNESS: Uh-huh. So I would just,
 8 you know, again state I'm not familiar with this
 9 document. I don't remember it. And I don't
 10 remember whether we did or did not have any
 11 involvement with it.
 12 BY MR. GOBENA:
 13 Q. But like I said, you worked with
 14 Mr. Miller previously, though, correct?
 15 A. Yes.
 16 Q. Did you believe him to be an honest
 17 person?
 18 MR. DALY: Object to the form.
 19 THE WITNESS: Yes.
 20 BY MR. GOBENA:
 21 Q. So if he recalls that Public Affairs
 22 did not approve of this report, you have no

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<p style="text-align: right;">Page 66</p> <p>1 reason to question his, his statement in that 2 regard; do you? 3 MR. DALY: Object to the form. 4 THE WITNESS: You know, I'm not going 5 to speculate on whether he may or may not have 6 remembered. I don't know. 7 MR. GOBENA: I don't believe this was 8 previously marked in a deposition, so I guess 9 we'll have it marked here now. I can't recall 10 what the next number is. 11 THE REPORTER: Plaintiff's Exhibit 1302. 12 MR. GOBENA: Plaintiff's Exhibit 1302. 13 (Plaintiff's Exhibit 1302 14 for Identification 15 was so marked.) 16 BY MR. GOBENA: 17 Q. I'm actually not going to ask you about 18 the attachment. I'm just going to ask you about 19 the cover memo, so why don't you just look at 20 that. 21 A. Okay. Okay. 22 Q. Okay. You'll see on the top right</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Uh-huh. 2 Q. Do you see that? 3 A. Yes. 4 Q. Do you know what the Medicare Working 5 Group was, as referenced here in the December '96 6 memorandum? 7 A. No. 8 Q. Do you recall ever being a member of an 9 entity at Abbott known as the Medicare Working 10 Group? 11 A. I do not recall that. 12 Q. But you are listed here in the "to" 13 line, though, in a discussion about the Medicare 14 Working Group; isn't that correct? 15 A. That is correct. 16 Q. Do you recall ever participating in 17 meetings with some of the individuals listed here 18 where Medicare issues were ever discussed in this 19 time frame? 20 A. No, I don't. 21 Q. And if you received this memorandum 22 from Mr. Rieger, would you have reviewed it?</p>
<p style="text-align: right;">Page 67</p> <p>1 corner this is a memorandum from Richard Rieger, 2 and it says here his title is Manager for 3 Strategic Planning. 4 Does this all -- at all, that title at 5 all refresh your recollection any more about who 6 Mr. Rieger was? 7 A. It does not. 8 Q. The memorandum is dated December 6th, 9 1996 and there's a bunch of addressees there 10 listed, including yourself? 11 A. Yes. 12 Q. And there's some other -- there's some 13 names that we've seen from other documents that 14 may be familiar, such as Mr. Buell? 15 A. Yes. 16 Q. Ms. Tobiason? 17 A. Yes. 18 Q. Mr. Tootell, Mr. Landsidle and 19 Ms. Haas. Do you see those names there? 20 A. Yes, uh-huh. 21 Q. And if you go to the re line, it says, 22 "Re: Medicare Working Group Update"?</p>	<p style="text-align: right;">Page 69</p> <p>1 MR. DALY: Object to the form. 2 THE WITNESS: I don't know. 3 BY MR. GOBENA: 4 Q. Did you generally as a matter of course 5 review documents that were addressed to you when 6 you're -- during your time of employ at Abbott? 7 MR. DALY: Object to the form. Go 8 ahead. 9 THE WITNESS: I get, you know, 10 thousands of documents a week. I don't review 11 every one of them. 12 BY MR. GOBENA: 13 Q. Okay. This document has been 14 previously marked as Exhibit 1170. And I'm not 15 going to spend much time on the attachment. I 16 want you to sort of to, to look at the cover 17 memorandum here. 18 A. Okay, okay, uh-huh. 19 Q. Again, if, if you go to the center of 20 this document, which is dated December 13th, '96, 21 there's a reference to the Medicare Working Group 22 meeting on December 16th, 1996.</p>

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